

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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JAMES SMITH

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.  
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: 13 Cr. 889 (RMB)  
: 20 Cv. 6844 (RMB)  
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**ORDER**

The Court having considered the applicable submissions, authorities and record herein, including (1) James Smith’s *pro se* motion, filed on February 9, 2024, in the Second Circuit Court of Appeals to vacate and set aside his current sentence of 34 years of incarceration; (2) the Second Circuit Order, dated March 12, 2024, that transferred Smith’s motion to this Court “for whatever further action the district court finds appropriate, as if it had been filed directly in the district court”; (3) Smith’s *pro se* supplemental motion, dated May 13, 2024 (ECF No. 152), contending that, under *Lora v. United States*, 599 U.S. 453 (2023), this Court had the discretion to impose his 10 year sentence under 18 U.S.C. § 924(j) concurrently rather than consecutively; and (4) the Government’s response, dated October 8, 2024 (ECF No. 156), asserting, among other things, “[h]ad the [District] Court possessed the sentencing flexibility provided by *Lora* at the time of the original sentencing, it might have allocated time differently among the counts, but it would not have changed the defendant’s overall sentence” of 408 months (*Id.* at 6.), **concludes that it is appropriate to resentence Smith but without prejudice to the outcome of any resentencing.**<sup>1</sup>

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<sup>1</sup> Any issues or arguments raised by the parties but not specifically addressed in this Order have been considered by the Court and rejected.

**Conclusion & Order**

The Clerk of the Court is requested to send a copy of this Order to Defendant. The Court also appoints CJA Counsel Glen Kopp to represent and assist Smith for the resentencing.

The resentencing is scheduled for January 29, 2025 at 10:00 AM. Any further submission on behalf of Smith should be filed by January 7, 2025. Any Government submission should be filed by January 14, 2025.

Date: November 4, 2024  
New York, New York

  
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RICHARD M. BERMAN, U.S.D.J.